

EMPLOYER STATUS DETERMINATION

Rick Franklin Corporation

SEP 08 2006

This is a determination of the Railroad Retirement Board concerning the status of Rick Franklin Corporation (RFC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA).

In a letter dated April 18, 2006, RFC provided the following information. According to RFC, Mr. Rick Franklin is the president and sole owner of RFC, a privately held corporation, and the company's assets. Mr. Franklin does not own any interest in any rail carrier. RFC assets include land and buildings, trucks, trailers, heavy equipment, office equipment and furniture, vehicles, railcars for lease/sale, flatcar bridges, and shop equipment. RFC provides logging road building, site preparation, heavy construction, heavy hauling, rock quarry work, railroad bridge work, scrap hauling, cutting, dismantling of rail cars, rail car lease/sales, land clearing, cleanup of train derailments, grinding and wood recycling, enhances streams, and work on environmental projects. RFC employs thirty (30) employees. According to the letter, RFC's truck drivers haul and unload equipment to railroad carriers' sites, and thereafter leave the site. RFC stated that, not including the RFC truck drivers, 25% of the employees work at times on jobs for railroad carriers; however, no employees have regular positions with the railroad carriers.¹ RFC further stated that RFC employees provide on-site services which include cleaning of derailed trains and damaged cars, using heavy equipment such as excavators, dozers, and loaders. RFC's employees assist the railroad carriers with opening tracks.

RFC's letter stated that RFC does not receive revenue or provide service in connection with the transportation of passengers or property by rail; however, RFC provides services for rail carriers which include Union Pacific Railroad (B.A. 1715) and Burlington Northern Santa Fe Railroad Company (B.A. 1012). The letter further stated that from 1998 through 2005, 32% of RFC's income came from its rail carrier clients. With respect to its

¹In a letter dated April 24, 1997, Mr. Bill Leinen, Manager Contract Services for Union Pacific Railroad Company, set forth the terms for "extra work" RFC may be requested to perform in connection with the contract agreement between Union Pacific and RFC. This work involves derailment support.

relationship with Union Pacific and Burlington Northern, RFC provides emergency response to derailments which includes cleaning up rail cars and debris and clearing the track to reopen for train traffic. According to the contract agreement with Union Pacific (Contract for Derailment Cleanup), RFC agreed to provide derailment support at Union Pacific's various properties located in Oregon, Washington, Idaho and California.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad *

* * .

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

RFC clearly is not a carrier by rail. According to the evidence of record, Mr. Rick Franklin is the sole owner of RFC. Furthermore, RFC is not owned by any railroad and is not owned by any other person or entity that is also an owner of a controlling interest in an employer covered under the Railroad Retirement Act. Based upon the facts of this case, the Board finds that Rick Franklin Corporation is neither controlled by nor under common control with an employer covered under the Acts.

Accordingly, the Board finds that Rick Franklin Corporation is not a covered employer under the RRA and the RUIA.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever